

## MEMORANDUM OF UNDERSTANDING

By and Among:

\_\_\_\_\_, a California Charter School;

and

\_\_\_\_\_, a California Public School District;

and

The State of California,  
State Allocation Board and California School Finance Authority

### **ARTICLE I – PURPOSE**

- A. This Memorandum of Understanding (“MOU”) is made and entered into as of \_\_\_\_\_ (“Effective Date”) by and among the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”); \_\_\_\_\_, a California Charter School (“Charter School”); and \_\_\_\_\_, a California Public School District (“School District”). The provisions of this MOU shall be effective from and after the Effective Date until \_\_\_\_\_ or until all duties and obligations of the parties are carried out.
- B. The Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq.
- C. The Funding Agreement between the Charter School and the State and the Use Agreement between the Charter School and the School District, (collectively, the “Agreements”) are attached hereto and incorporated into this MOU by reference. By execution of this MOU, all parties agree to the terms of the Agreements.

- D. This MOU is being entered into in accordance with the requirements of the CSFP. To the extent the MOU is inconsistent with or in conflict to the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations shall prevail.

## **ARTICLE II – FINANCING OF THE CHARTER SCHOOL’S PROJECT**

### **2.1 Fifty Percent Local Matching Share**

- A. The Charter School’s Application for *[final or preliminary]* apportionment for the Project has been approved by the State. The Charter School’s Apportionment (“Apportionment”) is contingent upon the Charter School paying its 50% Local Matching Share obligation, which will be paid to the State by way of payments pursuant to the Funding Agreement.
- B. The Charter School’s Application for *[final or preliminary]* apportionment for the Project has been approved by the State in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00). The State will provide funding for fifty percent (50%) of the approved costs for the Project in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), and the Charter School will be responsible for the remaining balance of the approved costs for the Local Matching Share for the Project in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00).
- C. The Charter School will receive initial funding from the State for the Local Matching Share, less any lump sum payments made by, or on behalf of, the Charter School.

### **2.2 Conditions for Release of Funding**

- A. The following conditions must be satisfied before the State will release funding:
- (1) The Charter School has complied with all funding release conditions contained in Section 2.2 of the Funding Agreement.
  - (2) The School District shall have satisfied all of the requirements for such funding under the CSFP.
  - (3) The Charter School agrees to utilize its apportionment for purposes consistent with the CSFP, and consistent with the purposes for which it was approved.
  - (4) Each party is duly authorized to enter, deliver, and perform the Agreements.

### **2.3 Charter School Facilities**

- A. The Charter School's Project includes the real property and all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property ("Facilities").
- B. The Charter School's Facilities are located at \_\_\_\_\_ County, California, and is more particularly described on Exhibit "C" of the Funding Agreement, attached hereto.
- C. The Facilities are physically located within the geographical jurisdiction of the School District and the high school attendance area generating eligibility for funding, if applicable.
- D. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities and to have acknowledged that they are in good order, condition and repair.
- E. The State shall not have any obligation for construction work or improvements on or to the Facilities. The Charter School has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this Agreement. The Charter School is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs.

### **2.4 Payments**

- A. The Charter School shall make payments to the State, as provided in the Funding Agreement in satisfaction of the requirements of the CSFP. B. The Agreements shall not be deemed to constitute a debt or liability or obligation of the State or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any political subdivision thereof, but shall be a special obligation payable solely from the payments made by the Charter School. The obligation to make payments does not constitute an indebtedness of the Charter School or the School District, within the meaning of any constitutional or statutory debt limitation or restriction and in all cases shall be made solely from legally available funds.

### **ARTICLE III – SECURITY PROVISIONS**

- A. The Charter School does hereby transfer to the School District or agrees to transfer to the School District contemporaneously with obtaining title to

the Facilities good, absolute and marketable title to the Facilities in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any nature what so ever other than those included in any other provisions of this Agreement. Title to the Facilities shall be held solely by the School District in whose boundaries the Facilities are to be located, in trust, for the benefit of the state public school system.

- B. Any person or entity providing a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of. If the contribution was made for the explicit purpose of purchasing any asset with a normal life expectancy of less than twenty years, the security interest will be adjusted to reflect the depreciation of the assets. Contributions used solely to assist the applicant in meeting its local matching share shall not be entitled to a security interest. Where a contribution results in total project funding beyond the state and local matching shares, the contributor's security interest shall be limited to the amount in excess of the state share and local matching share.
- C. If a default occurs and all payments have not been made, the security interest of any person or entity providing a substantial contribution to the costs of the project shall be satisfied only after the account is reimbursed for any remaining unpaid local matching share.
- D. *<Include specific security terms for any person/entity providing a substantial contribution on this project.>*

#### **ARTICLE IV – DEFAULT AND REMEDIES**

##### **4.1 Events of Default**

The occurrence of any of the following shall constitute a “Default” or “Event of Default”:

- (1) Failure by the Charter School to commence to use and occupy the Facilities for the operation of a charter school as required.
- (2) Failure by the Charter School to make any payment when due, and such failure continues for a period of ten (10) calendar days after receiving written notice by the State or the School District;
- (3) Failure by the Charter School to maintain insurance on the Facilities or to provide reasonable evidence of insurance as required, and where such failure continues for a period of ten (10) calendar days after receiving written notice by the State;

- (4) Failure by the Charter School to provide reasonable evidence of compliance with all legal requirements whether expressly stated in the Agreements or otherwise imposed by the State under the CSFP or other applicable law, or failure to observe or perform any other applicable covenant, condition or agreement, where such failure continues for thirty (30) calendar days after receiving written notice of the failure. If thirty (30) calendar days is insufficient, and the Charter School has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days;
- (5) The Charter School shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or the Charter School shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Charter School, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Charter School (unless, in the case of a petition filed against the Charter School, the same is dismissed in sixty (60) days) or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Charter School's Facilities; provided, however, in the event that any provision of this paragraph is contrary to any applicable law, it shall be of no force and effect, and not affect the validity of the remaining provisions;
- (6) The determination by the State that any representation or warranty made by the Charter School was untrue in any material respect when made;
- (7) The Charter School's charter is not renewed or is revoked, or the Charter School ceases to use the Facilities for a charter school purpose;
- (8) The Charter School shall abandon the Facilities; and/or
- (9) If the performance of the payment obligations of the Charter School is guaranteed, the actual or anticipatory failure or inability, for any reason, of the Guarantor to honor the guarantee as required, and

the Charter School's failure to provide written alternative assurance or security, which when coupled with the Charter School's then-existing resources, equals or exceeds the combined financial resources that existed at the time the Agreements are executed. The Charter School shall have sixty (60) calendar days following written notice by the State, to provide the written alternative assurance or security.

## **4.2 Remedies on Default**

The parties acknowledge and agree that the Agreements represent a unique situation that is not limited by the standard landlord's remedies provided by Sections 1951.2 and 1951.4 of the California Civil Code. Whenever any Event of Default shall have occurred, any one or more of the following respective remedies, which are not exclusive but cumulative, may be pursued:

- A. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, the Charter School shall remain liable for the performance of all of the obligations of the Charter School including, without limitation, the obligation to make payments to the State when due, so long as the Charter School continues to use and occupy the Facilities.
- B. On the termination of the Agreements for any reason, and to the extent permitted by law, the School District shall assume the obligation to pay to the State the balance of the unpaid local matching share obligation that accrues after the termination date in accordance with the payment schedule established by the State. However, the School District shall not immediately occupy the Facilities and the School District's payment obligations shall not begin until the completion of the review process, pursuant to Education Code section 17078.62. The School District shall complete the review process within a reasonable time, not to exceed six months from the time the Charter School is no longer using the Facilities. Assumption of the payment obligation shall in no way release the Charter School from its payment obligations that accrued prior to the termination of the Agreements or from the Charter School's obligations for any holdover. In the event of a failure of the School District after the termination date to make any payments to the State as required, the State shall have the right to pursue all legal rights and remedies against the School District to recover any such past due local matching share obligations.
- C. In the event the Charter School no longer is using the Facilities, the usage and priority provisions of Education Code section 17078.62 apply.

- D. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under the Agreements and under the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest and late charges, and all other sums due the State. The Charter School shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs.
- E. In the event of the Charter School's default and the recovery of the Facilities by the School District, the State shall have the right to recover from the Charter School (i) the amount of all outstanding payments or other obligations (whether direct or indirect owed by the Charter School to the State), if any, which are then due and owing, together with interest and late charges, and (ii) any other amounts due from the Charter School to the State, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable by the Charter School to the State.
- F. Notwithstanding anything to the contrary, the State may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights with respect to the Agreements or the Facilities, and the Charter School or School District, as applicable, shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs as provided in the Agreements or as otherwise permitted by law.
- G. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreements or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required under the Agreements. All remedies herein conferred upon or reserved to the parties shall survive the termination of the Agreements.

## **ARTICLE V – MISCELLANEOUS**

### **5.1 Release of Liability**

The State is hereby released from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which the Charter School or any of the Charter School's employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to the Facilities or the Charter School's project, including those in any way connected with Hazardous Materials presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities. In connection with this release, the Charter School hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

### **5.2 Non-waiver**

No waiver of any provision of the Agreements shall be implied by any failure to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver of any provision of the Agreements must be in writing and will affect only the provision specified and only for the time and in the manner stated in the writing.

### **5.3 Indemnity**

- A. To the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the School District or the State as applicable, indemnify, defend and hold the School District and the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from: (a) any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of the Agreements on the Charter School's part to be observed or performed; (b) the construction, operation, maintenance, alteration, use or occupancy of the Facilities by the Charter School; (c) the



condition of the Facilities, and any occurrence on the Facilities, from any cause whatsoever, (d) any acts omissions or negligence of the Charter School or the Charter School's employees, agents or contractors in, on or about the Facilities; and (e) any breach in the School District's representations or warranties provided under the Agreements.

- B. The Charter School will at all times protect and defend, at its own cost and expense, the title to the Facilities from and against all claims, liens and legal processes of creditors and keep all the Facilities and the title free and clear of all such claims, liens, and processes except for the liens created or expressly permitted under the Agreements and the CSFP.

#### **5.4 Applicable Law**

The Agreements shall be governed by and construed in accordance with the laws of the State of California.

#### **5.5 Amendments**

- A. The terms of the Agreements may not be waived, altered, modified, supplemented or amended in any manner except in writing, upon the agreement of all of the parties, or except as otherwise permitted by law.
- B. The terms of the Agreements may be amended, or new Agreements executed, as necessary, upon the application of the Charter School and the approval by the State of a final apportionment.

#### **5.6 Force Majeure**

The time for the Charter School or the State to perform any obligation or assert any right under the Agreements or the CSFP shall be extended on a day for day basis for any Force Majeure event, which shall include but not be limited to: (1) Acts of God or of the public enemy; and (2) Acts of the federal or State government in either its sovereign or contractual capacity.

#### **5.7 Entire Agreement**

The Agreements, together with the attachments, constitute the entire agreement among the parties. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding the Agreements.

THE STATE:

STATE ALLOCATION BOARD:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CALIFORNIA SCHOOL FINANCE AUTHORITY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE SCHOOL DISTRICT: \_\_\_\_\_  
(Name of S.D.)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE CHARTER SCHOOL: \_\_\_\_\_  
(Name of Charter School)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_